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Held at Headquarters, New York, on Monday, 24 October 2011, at 10 a.m.

Chair: Mr. Haniff Hussein ..... (Malaysia)

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The meeting was called to order at 10.05 a.m.

Agenda item 69: Promotion and protection of human rights (*continued*) (A/66/87)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/66/156, A/66/161, A/66/203, A/66/204, A/66/216, A/66/225, A/66/253, A/66/254, A/66/262, A/66/264, A/66/265, A/66/268, A/66/269, A/66/270, A/66/271, A/66/272, A/66/274, A/66/283, A/66/284, A/66/285, A/66/289, A/66/290, A/66/293, A/66/310, A/66/314, A/66/325, A/66/330, A/66/342, A/66/342/Add.1 and A/66/372)

(c) Human rights situations and reports of special rapporteurs and representatives (A/66/267, A/66/322, A/66/343, A/66/358, A/66/361, A/66/365, A/66/374 and A/66/518)

1. **Ms. Ezeilo** (Special Rapporteur on trafficking in persons, especially women and children) introduced her report to the General Assembly (A/66/283), which focused on the right to an adequate and effective remedy. The annexed Draft basic principles on the right to an effective remedy for trafficked persons were based on existing international human rights law and were designed to clarify the concept of the right to an effective remedy.

2. In August 2011, during a visit to Thailand, she had noted significant progress in efforts to address trafficking in persons. An anti-trafficking law had been enacted in 2008. There was robust Government and civil society cooperation, with multidisciplinary offices in each province to address trafficking. However, implementation and enforcement were weak and fragmented. Victims of trafficking were not properly identified, leading to arrest, detention and deportation. Delays in investigation and prosecution led to long stays at shelters for trafficked persons, violating their rights to move, to earn income and to live a decent life. Root causes of trafficking, particularly the demand for cheap and exploitative labour, were not being effectively addressed, perpetuating exploitation by brokers, employers and law enforcement agents. She had recommended enhanced training for police, immigration officials, judges, prosecutors and labour inspectors, a review of labour and migration laws to acknowledge the demand for cheap, low-skilled labour and provision of safe migration options. Comprehensive, tailored assistance to trafficked persons was needed.

3. **Mr. de Séllos** (Brazil) said that anti-trafficking measures should be adopted by countries of destination as well as by countries of origin.

4. **Ms. Morgan** (United States of America) said that restitution and compensation attacked traffickers' profits, putting them out of business and reimbursing victims for back wages and victimization-related medical or counselling expenses. All countries could do more to strengthen efforts to make services available to all categories of victims.

5. The United States linked cooperation by victims to long-term immigration relief and benefits to prevent fraud and to give victims an incentive to help bring their traffickers to justice. In the United States, non-immigrant status was granted if an adult victim complied with any "reasonable request" for assistance in the investigation or prosecution of acts of trafficking, such as providing a statement to law enforcement agencies. There were exemptions for those unable to cooperate due to physical and psychological trauma. Children under 18 were not required to assist law enforcement agencies in order to be eligible for public benefits. Anti-trafficking benefits should not be tied to successful prosecution of a trafficker. Victims who chose not to cooperate with law enforcement agencies had the opportunity to pursue other forms of immigration relief. The Special Rapporteur was invited to comment further on obstacles to obtaining permanent residency or citizenship in destination countries, including in those where a reflection and recovery period was offered.

6. **Mr. De Bustamante** (European Union) asked how to improve identification of trafficked persons and of trafficked women and girls who had been subjected to gender-based violence. Further information was also requested on how best to protect trafficked children so that they could realize their right to an effective remedy and how to ensure access to information, free legal assistance and other support for victims. Details on best practices for training law enforcement officials, prosecutors and lawyers on the rights of trafficked persons would also be welcomed.

7. **Mr. Abdullah** (Malaysia) asked how to ensure that trafficked persons, especially children, understood

their rights. He also wished to know how rights were enforced for child soldiers.

8. **Mr. Komar** (Indonesia) asked how the Special Rapporteur was cooperating on protection of trafficking victims with the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the United Nations Office on Drugs and Crime (UNODC).

9. **Ms. Hermestad** (Norway) said that her country had worked with UNODC to establish an effective, transparent, impartial review mechanism for the Convention against Transnational Organized Crime. The Special Rapporteur was encouraged to support that process actively. Measures to increase transparency and identify illicit financial flows had contributed substantially to the fight against trafficking in persons. More efforts to freeze and confiscate traffickers' proceeds were needed.

10. **Ms. Gregg** (Liechtenstein) said that, although the Rome Statute of the International Criminal Court included trafficking in persons under its enslavement provision and the Court had jurisdiction in several countries where trafficking seemed recurrent, there had been no trafficking investigations before the Court. She wondered whether the Special Rapporteur thought that the Court should address trafficking in persons and whether, under her mandate, she had submitted any material to the International Criminal Court.

11. **Mr. Roch** (Switzerland) requested further details on return without risk and reducing the risk of repetition. Minors without families and those whose families were involved in crime were at risk of repeated abuse. The draft basic principles should focus more on minors. He wondered whether collaboration with the Special Rapporteur on the sale of children, child prostitution and child pornography was possible.

12. **Ms. Mballa Eyenga** (Cameroon) invited the Special Rapporteur to make suggestions for States whose laws banned any use of confiscated and frozen assets, as well as for those which had yet to legislate in the area.

13. **Ms. Ezeilo** (Special Rapporteur on trafficking in persons, especially women and children), responding to questions, said that countries of origin might also become countries of destination or transit. Because countries of origin were most concerned with their trafficked citizens, they were often not prepared for the challenges facing countries of destination. That resulted in unresolved questions about the legal status of trafficked persons.

14. Victims needed to help identify traffickers and aid in prosecution efforts. However, sometimes victims were told that they must cooperate immediately or else be returned to the country of origin, arrested or detained without proper identification. A law enforcement perspective alone was insufficient; redress, recovery and reintegration must be included. Sometimes victims refused to talk or told inconsistent stories owing to fear of reprisals against family members but would talk when services such as shelter and psychosocial support were provided through civil society channels. Fraudulent claims were easily identifiable but excessive attention to the negative meant that those who needed assistance might not receive it.

15. Obstacles to residence were often legal in nature, related to a blurring of the lines between migrant workers and trafficked persons. Temporary resident status was necessary for civil proceedings and compensation to go forward. Identification of victims was crucial. The International Organization for Migration, UNODC and the United Nations Children's Fund (UNICEF) had developed tools to improve identification. However, there was no deliberate effort to identify victims, because the capacity to follow up with referrals and residency rights was lacking.

16. Immigration officers should be trained to investigate the possibility of trafficking when children travelled with non-relatives. While the Convention on the Rights of the Child defined a child as someone under 18 years of age, in some cases the definition was 16. The greatest challenge was to address issues involving those aged between 16 and 18; if they were identified as children, they were diverted from the formal justice system and received greater protection.

17. The greatest obstacle to access to justice was that people were not informed of their rights and language support was therefore essential. The International Labour Organization had a manual on training labour inspectors with regard to trafficking. To make them aware of their rights, children must receive information in a form which appealed to them. Financial support for education, including cash transfers to ensure that children remained in school, would reduce trafficking.

For child soldiers, the focus was on recovery, reintegration and addressing trauma.

18. She worked closely with the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and UNODC, as well as other mandate holders. She had met with the Special Rapporteur on the sale of children, child prostitution and child pornography to discuss collaboration and avoidance of duplication.

19. Following up on illicit financial flows and placing them in a fund to compensate victims was a valuable idea. It was important to focus on the traffickers, making their activities risky and costly. However, some States had not prosecuted a single case successfully. In dealing with proceeds of crime, transparency was important. Compensation funds for victims of violent crimes should be established.

20. The issue of trafficking had not been raised under the Rome Statute. Many people tried for war crimes had also trafficked women and sexually enslaved them, facts which should be used in their prosecution. There was no direct partnership with the International Criminal Court. Her reports would be sent to the Court so that such issues could be addressed.

21. The proceeds of crime should be used to compensate trafficking victims. Restitution was not always possible. Returning victims to their prior situation could result in revictimization. Victims who lacked opportunities at home continued to seek livelihoods and, as a result, people were sometimes trafficked two or even three times. The root causes were poverty, unemployment, gender inequality, conflict and official corruption that hindered development.

22. **Ms. Sekaggya** (Special Rapporteur on the situation of human rights defenders), introducing her fourth report on the situation of human rights defenders (A/66/203), said that in the past year she had gone on a country mission to India; presented a thematic report on the situation of women human rights defenders and those working on women's rights or gender issues to the sixteenth session of the Human Rights Council; attended the East African Human Rights Defenders Conference in Nairobi; and prepared a Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms as part of her efforts to increase understanding of the Declaration on Human Rights Defenders. The Commentary mapped out the rights provided for in the Declaration, addressed the most common restrictions and violations defenders faced and provided recommendations to facilitate States' implementation of each right.

23. The report focused on the rights and responsibilities contained in the Declaration and on the challenges faced by defenders. According to the Declaration, States must ensure the protection of the rights of defenders from violations committed not only by States but also by non-State actors. Rights instrumental for the defence of human rights included the right to freedom of peaceful assembly and peaceful protest against violations by State officials and non-State entities. In recent months, peaceful citizens who had raised their voices in various countries in support of democracy and human rights had been confronted with State violence. There was frequent use of excessive force by State agents responding to situations involving freedom of assembly and expression.

24. **Ms. Hubert** (Norway) invited the Special Rapporteur to share her thoughts on how to ensure that the Declaration was better known and applied by defenders. She asked what the Special Rapporteur hoped to achieve with the newly published Commentary to the Declaration.

25. **Ms. Schrenell** (United States of America) said that women defenders were more likely than men to be targeted by non-State actors. Retaliation took gender-specific forms such as sexual assault or rape. Human rights defenders working on issues of sexual identity and orientation were frequently stigmatized by Governments, faith-based groups and even their own families. They were often harassed and sometimes killed. More Governments should publicly voice support for the crucial services of women's rights advocates and human rights defenders working on sexual orientation and identity issues. Participants in gay pride parades should be protected.

26. **Mr. Fitzgerald** (Australia) said that events in the Middle East and North Africa had shown that human rights defenders were often the target of executions, torture, beatings, arbitrary arrest, detention or intimidation as a result of their activities. States were reminded of their responsibility to protect all individuals, including human rights defenders, who were subject to their jurisdiction. He wished for further

details on how regional organizations could help States fulfil their responsibilities to human rights defenders.

27. **Mr. Roch** (Switzerland) asked what States could do concretely to discourage criminalization of activities of non-governmental organizations and what measures could end stigmatization of women human rights defenders. How could the international community contribute to bringing perpetrators to justice?

28. **Mr. Luhan** (Czech Republic) asked how the international community should react to violations of the right of access to funding for human rights organizations and how to prevent misuse by States of information on international assistance provided to human rights organizations.

29. **Ms. Reckinger** (European Union) asked what additional efforts were needed to improve understanding of the Declaration and how States could help in that regard. She also wished to hear about best practices of States to address the specific risks faced by women human rights defenders. The Special Rapporteur stated in paragraph 87 of her report that the High Commissioner for Human Rights should develop a comprehensive strategy to protect defenders, including against threats and reprisals by non-State actors. The Special Rapporteur was invited to elaborate.

30. **Mr. Warner** (United Kingdom) expressed concern regarding proposed laws in Belarus which sought to prevent human rights defenders from accessing funding and holding peaceful gatherings, and expanded the powers of security forces. The Islamic Republic of Iran had recently handed down an 11-year sentence to a leading human rights activist, Narges Mohammadi, the executive chair of Iran's Centre for Human Rights. The Iranian authorities were urged to cease such harassment and ensure that the country's domestic legislation reflected its international obligations. There were reports that Syrian diplomats in the United Kingdom were harassing human rights defenders. The host Government had made it very clear that such behaviour would not be tolerated.

31. **Ms. Mc Breen** (Ireland) requested elaboration on the role national human rights institutions could play in protecting human rights defenders and on best practices of national and transnational corporations that had worked with local human rights defenders to develop human rights monitoring and accountability mechanisms. She invited the Special Rapporteur to comment on how States could better protect lawyers doing human rights defence work.

32. **Mr. Yahiaoui** (Algeria) said that economic, social and cultural rights were priorities for developing countries. He asked whether human rights defenders were above the law and referred to their obligation to make sure that they did not spread hate, violence and terror and act against public order and the national interest. There had been false allegations of intimidation and attacks against human rights defenders who had cooperated with the United Nations. He wondered how such false allegations could be avoided.

33. **Mr. Komar** (Indonesia) requested more information on the growing trend of violations by non-State actors and asked how States should respond. He also wished to hear more about best practices at the national level with regard to the unique challenges of women human rights defenders.

34. **Ms. Sekaggya** (Special Rapporteur on the situation of human rights defenders), responding to questions, said that the Declaration contained answers to many of the questions raised. She wanted enforcement of the rights contained in the Declaration. States should disseminate and translate the Declaration, which could provide guidance for the protection of women human rights defenders and those working on sexual orientation and identity issues.

35. Regional bodies knew what was occurring on the ground. Collaboration between the United Nations and regional bodies was therefore very useful. Such bodies could hold States accountable and use their own mechanisms to further enforce the Declaration. States should not criminalize peaceful work by human rights defenders.

36. According to the Declaration, matters of funding must be handled transparently, but a State should not restrict access to funding for human rights defenders. States must raise awareness to put an end to the risks faced by women human rights defenders. Such awareness-raising was needed for people working in law enforcement. The United Nations must develop strategies to ensure that defenders operated in a propitious environment and involve States in working out strategies to protect defenders. Some States provided hotlines and focal persons who could protect defenders.

37. National human rights institutions must investigate violations and bring perpetrators to justice. Such institutions should play a bigger protection role, as they knew circumstances within the country. They should produce annual reports for the legislative and executive branches.

38. Human rights defenders were not above the law; their activities must be peaceful, transparent and lawful. Intimidation of people who cooperated with the United Nations should be condemned. Defenders were early warning mechanisms of problems within countries. Best national practices included protection mechanisms, decriminalizing the activity of defenders, providing them with access to funds and training security forces and various stakeholders to ensure that they understood the Declaration and the role of human rights defenders and the media. There should be witness protection measures.

39. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) introduced his report to the General Assembly (A/66/254), which focused on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health.

40. **Mr. Rutilo** (Argentina) said that sexual education should be broad-based, age-appropriate and imparted without discrimination. Abortion was banned in Argentina, except in exceptional cases. His Government was not yet in a position to endorse the report as a whole.

41. **Mr. Zanu** (European Union) asked about measures to ensure and enhance access by women and girls to family planning. He inquired what measures should be taken to promote the right of children and young persons to sexual education, especially for those not in school. Persons with disabilities and lesbians, gays, bisexual and transgender people were even more vulnerable than women and girls. How could their right to the highest attainable standard of health be enhanced?

42. **The Reverend Philip Bené** (Holy See) said that the Special Rapporteur had wrongly asserted that criminal laws and other legal restrictions on abortion were a violation of the right to health, failing to take into account various international instruments that safeguarded and protected the inherent dignity and worth of persons born and unborn. The Convention on the Rights of the Child stated that children were entitled to appropriate legal protection before and after birth, and the International Covenant on Civil and Political Rights made it clear that capital punishment could not be carried out on pregnant women. There was no right to abortion under international law. The Convention on the Elimination of All Forms of Discrimination against Women made no reference to abortion. While the Special Rapporteur had mistakenly said that legal restrictions on abortion constituted a violation of the right to health, the very opposite was in fact the case. Abortion was the violation of the right to health of the unborn child and the mother. Abortion killed the unborn child and harmed the mother. It could bring about her death. It was a scientific fact that life began at conception. All induced abortions must be criminalized.

43. Parental consent must be required for all matters related to the health of children. The proposal to circumvent parental and spousal consent ran counter to the nature of marriage and parenthood and failed to take into account numerous articles of the Convention on the Rights of the Child.

44. **Mr. Schaper** (Netherlands) said the report was a key part of the Special Rapporteur's mandate. The independence of the special procedures must be vigorously maintained. It was inevitable that not all States would agree with all positions advanced, but mandate holders must feel free to do their work without fear of reprisal. It was healthy for mandate holders to challenge States (and also Observers) to re-examine their positions.

45. The Netherlands was a large donor to United Nations human reproduction research and training programmes and supported the recommendation to impose a moratorium on the application of criminal laws on abortion. The Netherlands supported implementation of the United Nations Educational, Scientific and Cultural Organization (UNESCO) 2009 International Technical Guidance on Sexuality Education. Indicators, which were quantitative and did not measure loss of dignity, must be more encompassing.

46. **Mr. Hauri** (Switzerland) said that systematic rape in armed conflict led to unwanted pregnancies, with victims resorting to illegal and harmful methods to interrupt them. Rape victims must have guaranteed access to adequate, legal health care. Switzerland

supported the decriminalization of all sexual and reproductive health behaviours, conditions and activities. Penalization was accompanied by discrimination and could be harmful to public health.

47. Early pregnancy occurred in contexts where girls had limited access to sexual education. Guaranteeing girls' school enrolment was effective in preventing early pregnancies. Local authorities had an important role to play in disseminating information on sexual education. He requested additional information on strengthening collaboration between the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Special Representative of the Secretary-General on Sexual Violence in Conflict.

48. **Ms. Hubert** (Norway) said that public morality could not justify the enactment of laws that could lead to human rights violations. The Special Rapporteur was asked to identify some of the major challenges in that regard. Restrictive laws should be eliminated so that Millennium Development Goals 3, 4, 5 and 6 could be achieved.

49. **Mr. Errázuriz** (Chile) said that his country shared the conclusions of the report regarding the autonomy of women and the obligation of States to disseminate information on sexuality and guarantee effective access to family planning. Chile did not recognize abortion. A greater effort on the part of the Special Rapporteur to understand views on the interaction between the right to life and abortion would have been appreciated. The Constitution of Chile provided protection for life from the time of conception.

50. **Ms. Phipps** (United States of America) said that family planning was essential to meeting broader development goals. Helping women space births and avoid unintended pregnancies could prevent 25 per cent of maternal and child deaths in the developing world. Family planning was the most effective way to prevent abortion and unplanned pregnancies.

51. **Mr. Verbrugghe** (Belgium) said that the special procedures were the eyes and ears of the Human Rights Council and must enjoy complete autonomy and independence. Ten years earlier, Belgium had issued a standing invitation to special procedures mandate holders and encouraged other States that had not yet done so to issue similar invitations.

52. **Ms. Martensson** (Sweden) requested information on how restrictive laws affected boys and men and their enjoyment of the right to health and on how criminal laws and other legal barriers related to reproductive health generated and reinforced gender stereotyping.

53. Conscientious objection laws could make legal health care services inaccessible. The Special Rapporteur was invited to discuss how conscientious objection laws could be compatible with States' obligation to ensure the right to health. She asked about the root causes of severe restrictions in some States which curtailed access to family planning and what steps States should take to implement the recommendations of the Special Rapporteur.

54. **Ms. Kalamäki** (Finland) asked for the Special Rapporteur's views on the role of men and boys in promoting the highest attainable standard of health for women and girls. In addition to decriminalization of abortion, she asked about other best practices to ensure the right of women and girls to the highest attainable standard of health and control over their own bodies.

55. **Ms. Mndebele** (Swaziland) said that the Special Rapporteur had largely ignored his mandate, focusing on a non-existent right to abortion. The universal right to health recognized in international instruments did not include abortion. His recommendation undermined paragraph 8.25 of the Programme of Action of the International Conference on Population and Development, which stated that in no case should abortion be promoted as a method of family planning. Governments and intergovernmental and non-governmental organizations were urged to deal with unsafe abortion as a major public health concern and reduce recourse to abortion through improved family planning. In circumstances where abortion was not against the law, it should be safe, and there should be quality services for management of complications arising from abortions. Post-abortion and family planning should be offered promptly to avoid repeat abortions.

56. The Constitution of Swaziland prohibited abortion except in extreme circumstances where the pregnancy posed a serious threat to the life of the mother or child. Abortion was not a right and should not be accessible on demand.

57. **Ms. Malefane** (South Africa) requested the Special Rapporteur's advice on interventions to address challenges such as HIV and AIDS.

58. **Ms. Mortensen** (Denmark) said that it was striking that the report documented that the Millennium Development Goals could not be achieved without decriminalizing abortion and removing restrictions on sexual and reproductive health care. Reduction of unsafe abortion was one of the most important ways to lower maternal mortality. Nearly all deaths from unsafe abortions were preventable. Safe access to abortion must be guaranteed.

59. The report clearly demonstrated that restrictions on abortion violated the right to health. Denmark agreed that morality could not serve as the justification for laws that might result in human rights violations. Public health was undermined, not realized, by criminalization. The report fully complied with the mandate of the Special Rapporteur. She asked the Special Rapporteur what steps should be taken to implement the recommendations in his report and how criminal laws related to reproductive health reinforced gender stereotypes, inequality and stigmatization. She also requested further details on how reproductive health indicators could be improved to take into account both health and rights issues.

60. **Ms. Toure** (United Nations Population Fund (UNFPA)) said that the report built on existing references and analysis, including the International Conference on Population and Development Programme of Action, the Beijing Platform for Action and Human Rights Council resolutions. The report highlighted that poor and marginalized women and girls were denied health care and the ability to make decisions about their own health. The right to sexual and reproductive health rested on recognition of the basic right of all to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so. It included the right to make decisions concerning reproduction free from discrimination, coercion and violence and underpinned the provision of family planning services and efforts to prevent child or coerced marriages, violence against women, unsafe abortion and sexually transmitted diseases. Sexual and reproductive health services should be accessible to all, including adolescents, unmarried women, indigenous people, migrants and refugees.

61. **Mr. Selim** (Egypt) said that his delegation was concerned about systematic attempts to reinterpret internationally agreed instruments in which the right to health had been defined very clearly. While the Millennium Development Goals were a tremendous challenge, especially for developing countries, the proposals for decriminalization were relevant to only a few of their components. The Special Rapporteur should point out other more important interventions needed for achievement of all the Millennium Development Goals, not just one or two of them. Attempts to derive new rights from the right to health raised some concerns.

62. **Ms. Sánchez** (Honduras) said that her delegation endorsed the remarks made by the representative of Chile.

63. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) respectfully disagreed with those, such as the representative of Swaziland, who said that he had exceeded his mandate. Approximately 44,000 women died each year owing to unsafe abortions. If that did not concern the right to health, nothing did.

64. It was inaccurate to say that he was articulating a right to abortion. The question was how to achieve the right to health for women. If criminalization of abortion was a barrier to health for women, it must cease. Criminalization had a chilling effect on services provided. Data from various countries showed that, as soon as activities were decriminalized, services became available. The right to life from the time of conception versus the right to health was a false debate. The right to health gave a different and correct approach for rethinking how to achieve Millennium Development Goals.

65. There was no denial of abortion in international law. The right to abortion was part of the right to health where circumstances warranted. Regional and international instruments did not say that there was no right to abortion, contrary to what opponents of the report had said.

66. Criminalization undermined the dignity of the person undergoing the act deemed criminal. It impeded health services and deprived health care providers of access to evidence-based information. A comprehensive strategy of family planning, contraception, education and evidence-based information would result in fewer deaths and abortions. Decriminalization of abortion was one of the most important measures for States to adopt in order to achieve the Millennium Development Goals.

The meeting rose at 1.05 p.m.